Montana Department of
LABOR & INDUSTRY
Workforce Services Division

JOB SERVICE
BOZEMAN

Third Quarter 2015
July 2015

121 N Willson; Bozeman; 59715
406-582-9200

Celebrating 25th Anniversary Of The Americans With Disabilities Act

July 26, 2015 marks the **25th Anniversary of the Americans with Disabilities Act (ADA)**. Celebrations of the signing of the ADA by President George H.W. Bush on July 26, 1990 are taking place across the nation.

The ADA and the ADA Amendments Act of 2008 (ADAAA) give civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. The ADA and ADAAA also assure equal opportunity for individuals with disabilities for access to businesses, employment, transportation, state and local government programs and services, and telecommunications.

OSHA QUICK CARD™ — Hazard Communication Standard Labels

OSHA has updated the requirements for labeling of hazardous chemicals under its Hazard Communication Standard (HCS). As of June 1, 2015, all labels will be required to have pictograms, a signal word, hazard and precautionary statements, the product identifier, and supplier identification. A sample revised HCS label, identifying the required label elements, is shown on the right. Supplemental information can also be provided on the label as needed.

The revised rule requires employers to provide hazardous chemical information to their employees using new safety data sheets and labels that are aligned with the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals. On March 26, 2012, OSHA issued a final rule modifying its hazard communication standard to conform to the global standard. The deadline to train employees on the new label and safety data sheets was Dec. 1, 2013. By June 1, 2015 all manufacturers, importers and employers must comply with new label requirements and safety data sheets. No new chemicals may be produced or enter the country without proper labels after this point, although distributors were granted an extra six months to deplete existing inventory until Dec. 1, 2015.

For more information: www.osha.gov or (800) 321-OSHA (6742) OSHA

OSHA®
Occupational Safety and Health Administration

Job Safety and Health
IT'S THE LAW!

All workers have the right to:

- A safe workplace.
- Raise a safety or health concern with your employer or OSHA, or report a work-related injury or illness, without being retaliated against.
- Receive information and training on job hazards, including all hazardous substances in your workplace.
- Request an OSHA inspection of your workplace if you believe there are unsafe or unhealthy conditions. OSHA will keep your name confidential. You have the right to have a representative contact OSHA on your behalf.
- Participate (or have your representative participate) in an OSHA inspection and speak in private to the inspector.
- File a complaint with OSHA within 30 days (by phone, online or by mail) if you have been retaliated against for using your rights.
- See any OSHA citations issued to your employer.
- Request copies of your medical records, tests that measure hazards in the workplace, and the workplace injury and illness log.

This poster is available free from OSHA.

Employers must:

- Provide employees a workplace free from recognized hazards. It is illegal to retaliate against an employee for using any of their rights under the law, including raising a health and safety concern with you or with OSHA, or reporting a work-related injury or illness.
- Comply with all applicable OSHA standards.
- Report to OSHA all work-related fatalities within 8 hours, and all inpatient hospitalizations, amputations and losses of an eye within 24 hours.
- Provide required training to all workers in a language and vocabulary they can understand.
- Prominently display this poster in the workplace.
- Post OSHA citations at or near the place of the alleged violations.

FREE ASSISTANCE to identify and correct hazards is available to small and medium-sized employers, without citation or penalty, through OSHA-supported consultation programs in every state.

Contact OSHA. We can help.

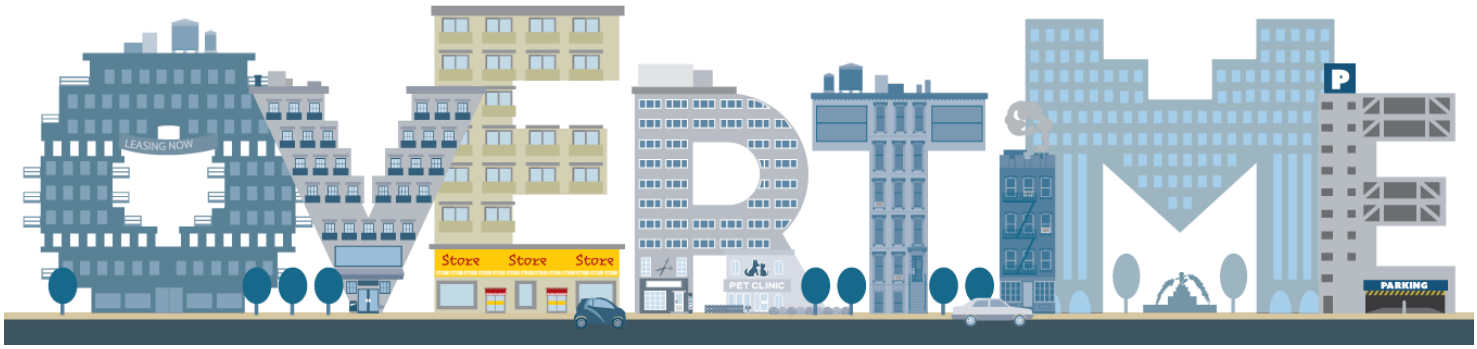
1-800-321-OSHA (6742) • TTY 1-877-889-5627 • www.osha.gov

Montana Department of LABOR & INDUSTRY
Workforce Services Division

JOB SERVICE BOZEMAN

A proud partner of the americanjobcenter network

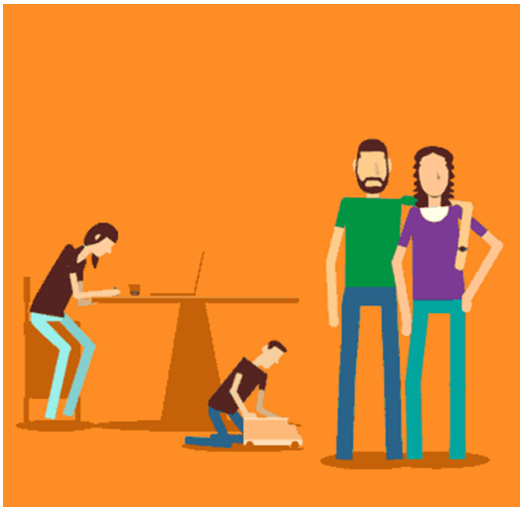
Rewarding Hard Work



Meet Jason

Jason has worked his way up to become a shift manager as part of the management team at a retail store in his town, helping lead a team of 40 employees.

Meet his family

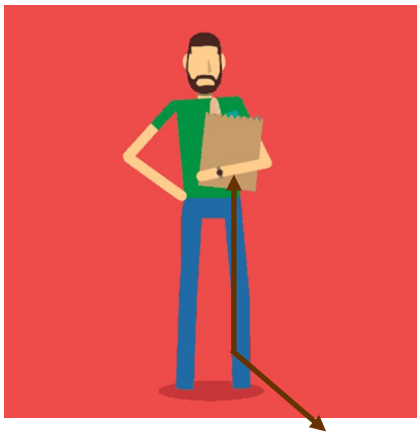


Married with two children, Jason struggles to pay the bills and provide the basic necessities for his family, even with a dual-income household.

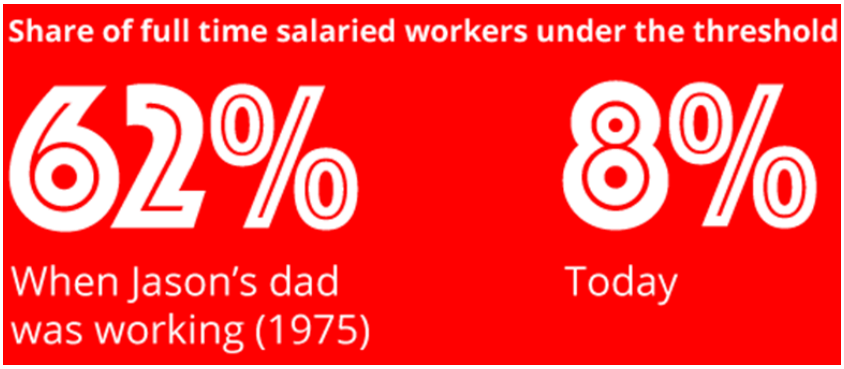
Even though he works more than 40 hours a week, he does not qualify for overtime. Jason is working harder and harder, but still struggling to help his family make ends meet.

From: http://www.dol.gov/featured/overtime/

Now and Then



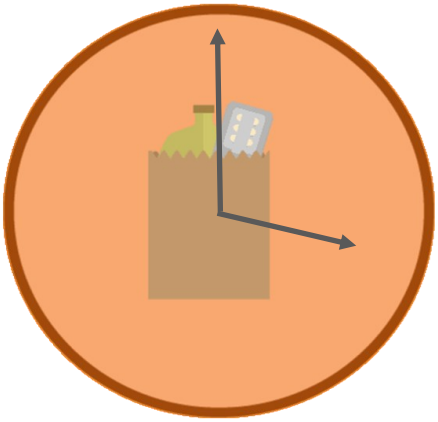
When Jason was young, his father worked full time, but didn't have the same struggles. That's because Jason's father qualified for and was paid overtime when he worked more than 40 hours per week, and was able to make enough to afford the basics for his family.



What's the Problem Here?

The rules that establish which workers are exempt from overtime pay haven't kept up with the cost of living. Today, certain professionals and managers are exempt from overtime if they make more than $23,660 a year and perform specific duties. This is less than the poverty threshold for a family of four.

LOSING OUT ON TIME, MONEY



Without updating the white collar exemption, salaried employees like Jason will continue to not make overtime even when they work over 40 hours per week.

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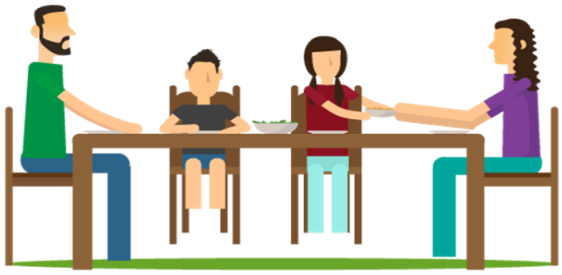
We Can Fix This!

PROPOSED OVER-TIME THRESHOLD $50,440

"Fair Day's Pay for Fair Day's Work "



By updating the overtime rules, we're ensuring a fair day's pay for a fair day's work. This would mean more time with his family and more money in his pocket and others just like him who are working hard and deserve to be rewarded for their work.

New Overtime Regulations

On July 6, the U. S. Department of Labor published the much-anticipated proposed update to the overtime Regulations found at 29 CFR Part 541. Here is a 'Cliff's Notes' version of the proposed update: The only substantive change proposed in this 98(!) page document is an increase in the Salary Level to at least $920.00 per week ($47,840 annually)1 It is projected that, by the rules change, the Salary Level would actually be $970.00 per week ($50,440 annually).

The proposed Salary Level reflects the 40th percentile of earnings for full-time salaried workers in the U.S. The new Salary Level Test would be subject to annual updates, linked to the 40th percentile figure or, alternatively, based on changes in the CPI-U.

Needless to say, an annual update would require employers to annually review their Exempt positions to ensure compliance with the new Salary Level.

FAIR LABOR STANDARDS ACT OVERTIME REGULATIONS

The DOL is also considering whether to permit nondiscretionary bonuses to count toward 10% of new Salary Level threshold, as long as the bonuses are paid monthly or more frequently.

Again, the only changes proposed affect the salaries paid to Exempt positions: The DOL has not proposed changes to the Salary Basis or Duties Tests, and it did not propose allowing private employers to provide compensatory time in lieu of overtime pay, which would have increased workplace flexibility for employees and employers. However, the DOL did leave the door open to additional changes. In the proposed rule, the DOL asks for public comment on a number of questions about the Executive, Administrative and Professional Duties Tests. Specifically, the DOL wants to know:

PROPOSED UPDATE TO FEDERAL OVERTIME REGULATIONS

☐ What, if any, changes should be made to the Duties tests?

☐ Should Exempt employees be required to spend a minimum amount of time performing work that is their primary duty in order to qualify for the exemption? If so, what should that minimum amount be?

☐ Should the DOL look to California law, requiring that more than 50 percent of an employee's time be spent exclusively on work that is the employee's primary duty (Exempt level work), as a model? Is some other threshold that is less than 50 percent of an employee's time worked a better indicator of the realities of the workplace today?

☐ Does the current Duties test for each exemption category appropriately distinguish between exempt and nonexempt employees? Should the department reconsider its 2004 decision to eliminate the long- and short-duties test structure?

☐ Is the concurrent duties regulation for Executive employees—allowing the performance of exempt and nonexempt duties concurrently—working well or does it need to be modified? Alternatively, should there be a limitation on the amount of nonexempt work that an Exempt Executive can perform? To what extent are Exempt lower-level Executive employees performing nonexempt work?

☐ Exempt Administrative positions are the most complicated to administer. The current Regulations, at 29 CFR 541 Subpart C, provides several examples of non-exempt and exempt duties performed by employees in Administrative positions. Do you want more examples? Do you have a specific situation you would like addressed? The DOL also wants to know if employers should be able to apply up to 10% of nondiscretionary bonuses to satisfy a portion of the Salary Level Test. If so, what is the maximum percent that should be allowed to be included?

The Notice of Proposed Rulemaking (NPRM) published on July 6, 2015 in the Federal Register (80 FR 38515) and invited interested parties to submit written comments on the proposed rule at www.regulations.gov on or before September 4, 2015. Only comments received during the comment period identified in the Federal Register published version of the NPRM will be considered part of the rulemaking record.

Job Openings and Labor Turnover Survey

Four Things You Need to Know About JOLTS

On the first Friday of each month, the Bureau of Labor Statistics releases … its estimate of the number of jobs created in the previous month. These "jobs day" numbers gain a lot of media attention. Just a few days later, though, BLS releases another set of important estimates, this time from the Job Openings and Labor Turnover Survey, known as JOLTS.

This survey of business establishments—offices, factories, stores, etc.—provides monthly data on the number of job openings, hires and separations (separations include both layoffs and voluntary quits). While the JOLTS release doesn't garner as much attention as the jobs day numbers, it provides crucial insight into the health of our labor market.

JOLTS

JOLTS is a less well-known survey… Here are answers to some of the most frequently asked questions about it:

Q: What are JOLTS numbers used for?

A.: The JOLTS numbers give us insight into the dynamics of the labor market. That is, they go beyond the net increase in employment and provide estimates of the number of hires and separations that underlie the net changes. For example, in a jobs day report we may see 250,000 net new jobs were added. What is not shown is that those 250,000 jobs were probably the result of 5 million hires and 4.75 million separations. That's where JOLTS comes in. Knowing how much "churn" there is in the labor market tells us about its strength, since churn is linked to both employment growth and wage growth.

Q: Is the sample size of JOLTS really large enough to tell us anything?

A: Absolutely. The JOLTS sample of 16,000 establishments is indeed small compared to some of the BLS surveys; the Current Employment Situation survey that the payroll employment numbers come from surveys more than half a million business establishments each month. Due to JOLTS' smaller sample size, month-to-month changes are often not significant. However, when looking over a longer period, changes in key indicators provide excellent information about underlying changes in the market. For example, between March 2014 and March 2015, the number of voluntary quits increased by 353,000. What this means is that more and more workers are feeling confident enough in their ability to secure another job that they are willing to quit the job they have.

Q: How does BLS determine the number of job openings?

A: BLS reports all positions open on the last business day of the month. Three criteria need to be met in order for a position to qualify as a "job opening." First, a specific position must exist and work needs to be available for that position. Second, the work must be able to begin within 30 days regardless of whether or not the employer finds a viable applicant. In other words, the opening can't be for apposition starting five months from now. Finally, there has to active recruiting for workers, such as advertising the opening, using employment agencies or job fairs and passing along information to professional networks.

Q: What does JOLTS tell us about the economy right now?

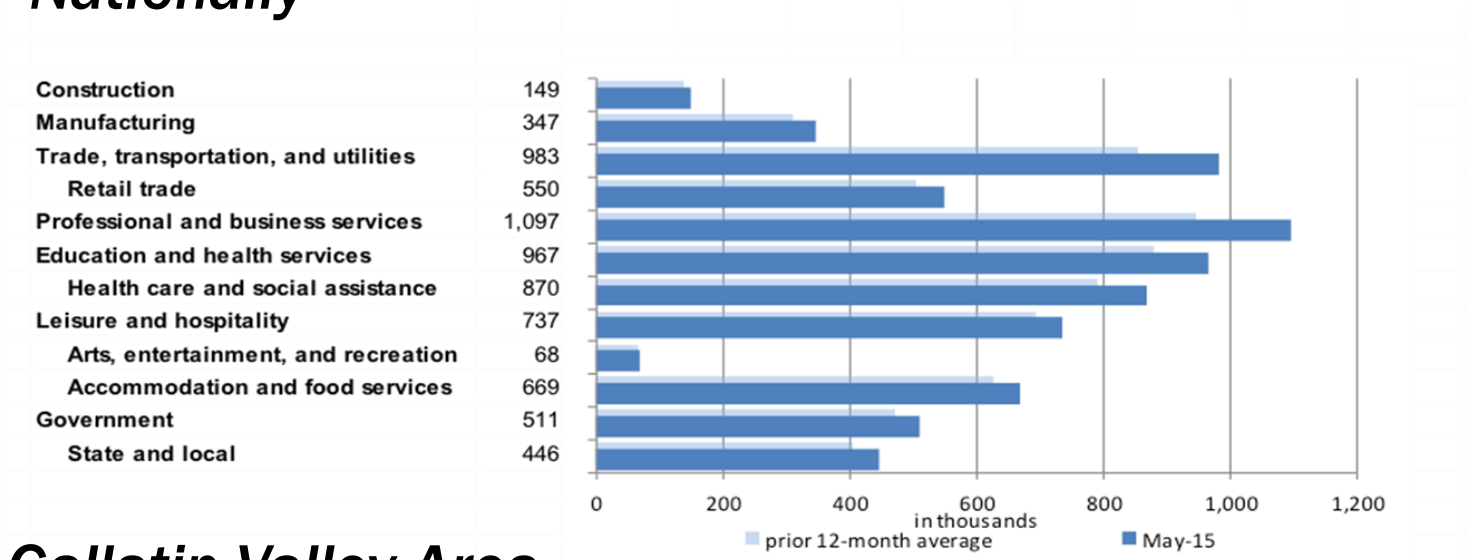
A: The JOLTS data show that the labor market is steadily gaining strength and dynamism. Over the last year, the number of job openings is up 784,000 and is more than double where it was during the recession. Similarly, in the latest data there were 5.1 million hires—up from 3.6 million in the depths of the recession—and 2.8 million quits, up from 1.6 million. But what is perhaps most telling about the improvement of our economy is the fact that during the worst of the recession there were nearly 7 unemployed workers per job opening and today there are less than 2. While we still have ground to make up, the JOLTS data clearly indicate we're headed in the right

Next Release: Job Openings and Labor Turnover data for June 2015 are scheduled to be released August 12, 2015, at 10:00 A.M. Eastern Time.

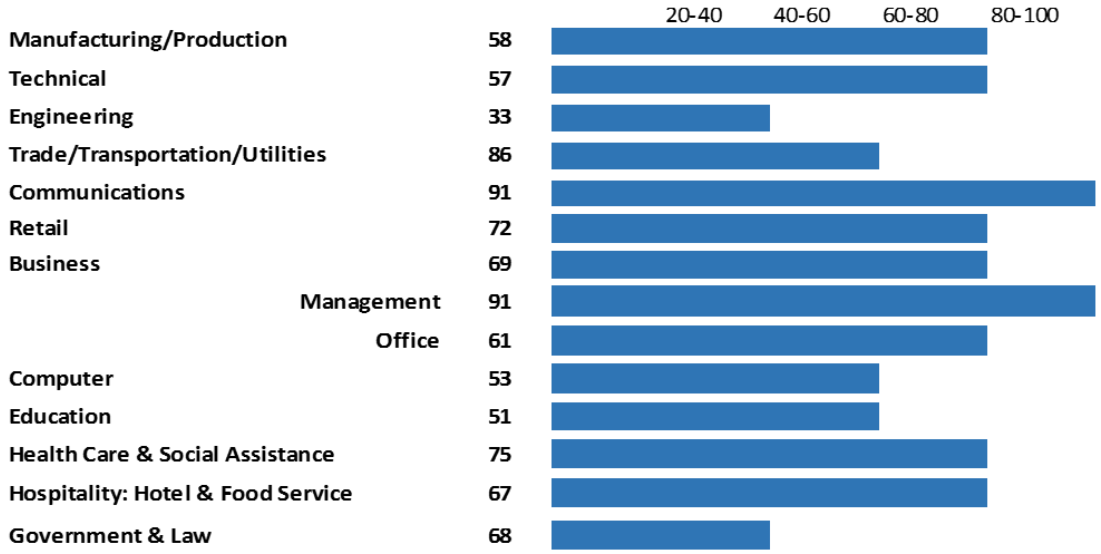
Source: Bureau of Labor Statistics, Current Employment Statistics and Job Openings and Labor Turnover Survey, July 7, 2015.

Note: Shaded area represents recession as determined by the National Bureau of Economic Research (NBER).

Nationally



Gallatin Valley Area



The U. S. Department of Labor recently posted new model FMLA notices and medical certification forms. The forms can be accessed from the DOL web page shown below.

http://www.dol.gov/whd/fmla/2013rule/militaryForms.htm

Montana Law Bars Employers from Employee Social Media Information

Montana has enacted a law barring employers from delving into employees' and applicants' social media accounts, with a few exceptions.

House Bill 343, signed by the governor on April 23, 2015, and effective immediately, prohibits employers from:

***Requiring employees or applicants to disclose information from their social media accounts, or tell the company their user names or passwords so that the company can get into their personal social media accounts.**

***Discharging, disciplining, or otherwise retaliating against an employee or job applicant for refusing to comply with a request that would violate those principles.**

There are exceptions allowing employers to require employees to disclose this information if the employer has specific information that the employee was involved in misconduct or disclosed the company's proprietary, financial, or confidential information; or if requiring disclosure would be necessary in order to comply with federal law, and an investigation is under way.

Employers may also, however, continue to promulgate workplace policies for the use of their electronic equipment, such as policies requiring employees to disclose their user names, passwords, or other information for company-provided devices such as cell phones, computers, and tablet computers.

The American Civil Liberties Union calls employer policies requiring employees to divulge this information a grievous invasion of privacy, citing examples of employees or applicants whose employers or prospective employers asked them to provide their Facebook logins or passwords. Employers on the list included the Maryland Division of Corrections, the police department of Norman, Oklahoma, and the city of Bozeman, Montana. (Bozeman changed its policy after a public outcry).

According to the National Conference of State Legislatures, lawmakers nationwide have been hearing reports about employers asking employees to turn over the usernames or passwords for their personal accounts. The employer interest in accessing these personal accounts is prompted by the need to protect proprietary information or trade secrets, to comply with federal financial regulations, or to prevent the employer from being exposed to legal liabilities.

Staff Members for the Bozeman Job Service

Is Your Intern Really an Employee?

You just hired a bright, local high school or college student to intern at your company this summer. You need not be concerned with wage and hour, child labor or other laws because they only apply to employees, and your new addition is an intern—something entirely different. Right? Not necessarily. And if you are mistaken—if this student is more appropriately classified as an "employee" in the eyes of federal and state regulators—you may find yourself in violation of applicable tax, wage and hour, wage payment, immigration, workers' compensation laws, the Employee Retirement Income Security Act, and a host of other state and federal laws. But it gets worse: you may be subjected to intrusive audits and investigations, drawn into burdensome and expensive litigation, or face substantial civil fines and penalties, to name just a few perils you never may have considered.

Determining Whether an Intern Is Really an Employee

The FLSA offers no practical definition of employee, and the Supreme Court has not spoken. Recent court cases demonstrate that there are no bright lines or rules, despite a six-factor test used by the U.S. Department of Labor (DOL) for years before appearing in a clarification issued in 2010.

The DOL's six criteria for a legal unpaid internship may be found here. They are: The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment. The internship experience is for the benefit of the intern. The intern does not displace regular employees, but works under close supervision of existing staff. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded. The intern is not necessarily entitled to a job at the conclusion of the internship. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship. Although the courts have not yet announced an FLSA definition of employee in this context, recent court cases have distilled a few basic principles with which the DOL criteria above are consistent. The key factors tending to support a court's finding that an intern or other "trainee" is not an employee require a look at whether: The trainee works for his or her own benefit to learn a profession or vocation with adequate supervision and instruction from the company. The company does not derive the primary benefit of the work performed by the intern. The trainee does not displace paid employees. If any of the three factors above is missing, the intern is likely to be classified as an employee. In that case, the FLSA will require wages to be paid and will impose various restrictions on the employment.

Montana Amends Its Data Breach Law

In a reminder that no state data breach law is created equal, Montana recently revised its data breach law, including big changes to its definitions of what constitutes personally identifiable information (PII). These changes take place in the midst of debate of a federal breach notification law (with the White House recently weighing in and after several proposals were introduced in the past year by various legislators), and remind everyone to carefully consider where the impact of a breach will be felt and how each individual state defines PII and requires notification in the event of a breach.

Montana's PII definition has been expanded, effective October 1, 2015, to include individual taxpayer numbers and "medical record information," which is defined elsewhere in Montana law as personal information that relates to an individual's physical or mental condition, medical history, treatment or claim information. The law also requires that any entity that issues a notice of breach must also simultaneously submit a copy of the notice to the state attorney general, which must identify the number of people in Montana who received the notification.

HOUSE BILL NO. 74

INTRODUCED BY R. LYNCH
BY REQUEST OF THE DEPARTMENT OF JUSTICE

AN ACT REVISING DATA SYSTEM SECURITY BREACH NOTIFICATION LAWS; REQUIRING THE ATTORNEY GENERAL AND INSURANCE COMMISSIONER TO BE NOTIFIED OF A DATA SYSTEM SECURITY BREACH; AND AMENDING SECTIONS 2-6-501, 2-6-504, 30-14-1704, AND 33-19-321, MCA.

Are You Enjoying Summer?

http://blog.dol.gov/2015/06/01/are-you-ready-for-summer/

OSHA provides resources for workplace preparedness and response to severe weather emergencies that can arise in summer, including hurricanes, wildfires and floods, as well as for preventing heat illness. OSHA and NOAA encourage workers and employers to be aware of weather forecasts, train workers on severe weather plans, and keep emergency supplies, including a battery-operated weather radio.

Remember: No matter where you work this summer, staying safe and healthy isn't just the best way to ensure a summer of fun – it's the right of every worker.